IV. Response to General Comments

The extended comment period on the proposed rule ended on March 2, 2004. We received about 18,000 comment letters and electronic communications. An exact count of the comments is not available due to the large amount of duplication among the comments; very often a single individual or entity submitted identical comments multiple times or via different media. We did not attempt to keep track of all the duplications, although we observed many. Large numbers of comments supported or opposed the proposed rule in general terms, or discussed issues without addressing specific sections. Most gave reasons that do not relate to specific provisions of the regulations. In this section, we will discuss the comments that addressed the regulatory process as it pertains to this rule, general comments supporting and opposing this rule, issue-oriented comments that do not address specific sections, and comments raising issues not addressed in the proposed rule. The comments are organized by subject and presented in groups that address a theme on the subject. We have grouped similar comments together into themes and addressed them with a single response.

BLM published a Notice of Availability for the associated Draft EIS on January 6, 2004 (69 FR 569). On January 16, 2004 BLM published a notice that extended the public comment period on the proposed rule and Draft EIS until March 2, 2004 (69 FR 2559) so that those commenting would have sufficient time to review the Draft EIS.

Over 18,000 comments were received combined on the draft EIS and proposed rule. Responses to those comments were summarized along with the comments and enclosed in the Final EIS that was published on June 17, 2005.

Approximately 188 comments were submitted after close of the extended public comment period. Five raised specific issues, and one was submitted from a sister agency, the U.S. Fish and Wildlife Service.

We decided that an additional document was necessary to respond to those comments, while also further clarifying issues in the FEIS, and began working on an Addendum to the FEIS. On March 31, 2006, BLM published the Notice of Availability for this Addendum to the original FEIS, which was entitled "Proposed Revisions to Grazing Regulations for the Public Lands Final Environmental Impact Statement."

A. The Regulatory Process

Some comments addressed the regulatory process itself. One comment urged BLM to clarify when comments are due by specifying a date and time, including time zone, stating that they find it uncertain when the exact comment deadline is in the electronic age. Another comment stated that BLM should not ignore comments received from the public during the rulemaking process.

We always accept comments postmarked or electronically dated within the stated comment period, regardless of the time zone of origin. In future proposed rules, we will make this clearer. We received almost 18,000 letters, postcards, e-mails, faxes, web-based comments on the proposed rule and the DEIS, and statements made at the public meetings, and the BLM staff reviewed every comment numerous times.

We have responded to comments on the content of the proposed rule and the DEIS in either this final rule or the final EIS (including the Revisions and Errata document and the Addendum to the FEIS), or both. In some cases, we responded with a change in the regulatory text, and in others with revised or additional language in the EIS. In other cases, we have tried to explain in this preamble why we did not adopt the comment. Since we received so many communications to analyze, we have not attempted to respond separately to every duplicate or substantially similar communication individually, and we did not adopt every suggestion contained in the comments. We often receive conflicting comments from the public. BLM considered all views and suggestions regarding the rule, especially suggestions to improve the language in the regulations. We discuss either in this preamble or in the EIS every discrete suggestion and argument raised in the comments.

Those comments that appeared in form letters or that were expressed multiple times in multiple ways have been addressed in a response to a prototypical example of each such communication, or have been summarized and responded to as a general

comment. BLM has not ignored any comments received at any point during the rulemaking process.

One comment stated that BLM should have answered questions at the public meetings to help clarify the proposed rule.

During the public meetings, BLM sought direction from the audience on other possible policy issues or regulation changes that we should consider for implementation. BLM did not want to influence the audience or limit the possible discussion during the meetings.

One comment stated that BLM should give more weight to comments and concerns from the agricultural industry than those from other interests. Another stated that the Public Lands Council comments should be the first guide in amending the grazing regulations.

BLM considered all relevant comments from the public equally on their merits, whether they were from industry, other government agencies, staff comments, academia, other interest groups, or individuals.

One comment stated that BLM "subverted" the NEPA process by issuing the DEIS after the proposed rule was published.

We respond in detail to this comment in the discussion of NEPA compliance under Procedural Matters, section VI of this preamble.

B. General Support

Many comments supported the proposed rule because it recognized the socio-economic and cultural importance of public land grazing to adjacent and local communities and considered the concerns of public land grazing users. Others stated that the rule would protect the health of the land by relying on science, improving working relations with permittees and lessees, improving administrative effectiveness and efficiency, and making it clear that changes in use must be based on monitoring and assessment.

C. General Opposition

Many of those who opposed the proposed rule stated that BLM should not adopt the rule because it would give ranchers preferential treatment at the expense of the nation's natural resources; favor ranchers and elevate grazing as the primary use of public land instead of managing for multiple resources and restoring degraded resources; weaken the conservation and restoration of public lands; limit public participation; limit BLM's regulatory authority with respect to public lands; and return to the archaic notion that the grazing lessee in essence owns the public's land. Others opposed the rule, stating that it hampers the work of BLM field offices, or that it fails to identify good and bad grazing practices. Many comments opposed the rule, expressing their opposition in terms of opposing public land grazing itself.

BLM makes no changes in the final rule in response to these comments. We agree that we are a multiple use agency and that single uses should not generally be favored at the expense of other users or resources. These regulations do not favor ranchers at the expense of other resources. BLM has never operated under the notion that the grazing operator in essence owns the public land, and these regulatory changes do not introduce provisions that would provide for rancher ownership of the public lands. Rather, the changes are intended, among other things, to improve the cooperative environment within which ranching takes place on public land. At the same time we have made certain that these adjustments to the regulations do not harm the rangeland resources or prevent significant involvement of the public in rangeland management. We need to amend the current regulations to improve working relationships with permittees and lessees, to protect and enhance the health of the public rangelands, to resolve some legal issues, and to improve administrative efficiency. The final rule continues to provide for BLM cooperation with other government agencies that have responsibility for grazing on public lands. The final rule provides for the interested public to review, provide input, and comment on reports that evaluate monitoring and other data used as a basis for developing terms and conditions of a grazing permit or lease. Also, the final rule retains interested public participation when preparing allotment management plans, developing range improvement projects, and apportioning additional forage. In the final rule, the interested public retains the opportunity to review proposed and final decisions, as well as the right to protest proposed decisions and appeal final decisions as long as they meet the requirements of 43 CFR 4.470.

BLM manages for multiple uses. We also restore degraded resources, and believe that we can pursue restoration while administering grazing in accordance with the regulations..

We do not seek to elevate grazing to be the primary use of public land. BLM manages the public land on the basis of multiple use and sustained yield. We intend the regulatory changes to improve working relationships with permittees and lessees. We anticipate that these changes will improve consultation, cooperation, and day-to-day coordination with them. Additionally, the rule focuses communication efforts on those groups most interested in the management of public lands for grazing. The cooperation fostered by the final rule should help make BLM's field work more efficient and cost effective.

BLM does not believe that the final rule weakens environmental standards. For example, it strengthens standards by requiring monitoring and land assessment in areas that do not meet rangeland health standards due to grazing practices before BLM makes a determination to that effect. As a result, BLM's decisions are expected to reflect a more comprehensive analysis that in turn can be anticipated to help ensure defensible decisions if appealed and ultimately more effective decisions from both an implementation and land health perspective. The final rule retains the fundamentals of rangeland health and requires that Standards and Guidelines developed by BLM State Directors be consistent with these fundamentals. The final rule retains the regulatory requirement that BLM take

appropriate action whenever existing grazing management practices or levels of grazing use are significant factors in not achieving standards or conforming with guidelines. The final rule retains provisions that allow BLM to close areas to grazing or modify grazing practice when necessary for immediate protection of resources because of conditions resulting from fire, drought, flood, or insect infestation. The final rule retains provisions for BLM to review grazing permits and leases and to make changes as needed to maintain or improve rangeland productivity or assist in making progress toward restoring ecosytems to properly functioning condition. The final rule retains provisions that the range improvement fund be used for improvements that benefit rangeland resources, including riparian area rehabilitation, improvement, and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro management facilities, vegetation improvement and management, and livestock grazing management. The final rule retains provisions that prohibit cutting, burning, spraying, destroying or removing vegetation without authorization. The final rule provides that BLM may suspend or cancel the permits or leases of operators who are convicted of performing environmentally degrading acts on allotments where they are permitted to graze. Nothing in the final rule diminishes BLM's regulatory authority.

As for distinguishing between good and bad grazing practices, the rule does change the way BLM determines whether an operator has a satisfactory record of performance. See the discussion under section 4130.1-1, below.

Some comments stated that BLM should not change the regulations because the new regulations do not follow the Secretary's "4 Cs" philosophy.

The changes in the regulations are designed to improve communication, consultation, and cooperation in the service of conservation. We explain elsewhere in this preamble how the various changes help to conserve the health of the land by encouraging cooperation between BLM and grazing permittees and lessees, and how the interested public can participate at various stages of the range management process.

One comment stated that BLM should revise the proposed regulations in order to better reflect its multiple use mandates, and that BLM failed to justify reversing current regulations. Another stated that the proposed rule represented fundamental policy shifts. Others stated that the current regulations were litigated and upheld in Federal court.

BLM stated the reasons for the changes in the grazing regulations in the proposed rule. The final rule does not contain fundamental policy shifts, although it amends aspects of the 1995 rule. We intend the revisions to improve working relations with permittees and lessees, to protect the health of the rangelands, to increase administrative efficiency and effectiveness, and resolve legal issues. The fact that a regulation has been approved in a court decision does not mean that the agency can never amend it further if it finds a need to do so. The changes in the final rule are driven by specific issues and concerns that have come to BLM's attention through experience with the 1995 regulations and from public comments.

The regulatory changes are narrow in scope, do not include changes in the fundamentals of rangeland health or the standards and guidelines for grazing administration, and otherwise leave the majority of the 1995 regulatory changes in place. FLPMA provides authority and direction for managing the public lands on the basis of multiple use and sustained yield principles. FLPMA land use planning has determined that grazing continues to be an appropriate use of a large portion of the public lands administered by BLM. The final rule will not affect BLM's multiple use mandate. In fact, one of the major areas of focus of the grazing regulations revisions is protecting the health of the rangelands by making temporary nonuse a more flexible option, by requiring a BLM finding that additional forage is available for livestock use as opposed to other uses before authorizing livestock grazing use of it on a temporary or sustained-yield basis, and by emphasizing monitoring as a basis for BLM decisions on grazing management, including any increases in active use as well as decreases.

Comments opposing the rule asserted that grazing has degraded wildlife habitat, soils, cultural sites, native plant communities, and riparian resources, leading to increased erosion, loss of range productivity, invasion by exotic plants, and will result in desertification and increased listing of species as threatened or endangered. Other comments stated that the proposed rule would do little to promote recovery of streamside vegetation and would cause short-term damage to rangeland and wildlife habitat. Comments urged BLM to take actions to restore these lands, not weaken the grazing regulations, stating that the impacts of overgrazing on western rangeland streams, rivers,

and fisheries have been documented. A comment said that BLM should allow the land to rest to heal from overgrazing.

These comments are largely directed at the grazing program itself, and are beyond the scope of this rule, which is focused on improving administration. The elimination of grazing from the public lands has not been considered here. This level of analysis was undertaken for the comprehensive changes made in the grazing regulations in 1995. Here, the changes are administrative in nature. Uses other than grazing can contribute to the problems discussed in the comments. Within its resource capabilities, BLM, in cooperation with users and the public, manages grazing and other uses in a manner that recognizes and addresses the potential for these impacts so that, ideally, they are avoided or mitigated. Under subpart 4180 of the grazing regulations, BLM must manage grazing, which includes rest from grazing where appropriate, in a manner that achieves, or makes progress towards achieving, standards for rangeland health. These standards have been developed on a regional basis and address watershed function, nutrient cycling and energy flow, water quality, habitat for endangered, threatened, proposed, candidate, or other special status species. The final rule will strengthen BLM's ability to implement grazing strategies that provide for maintenance or achievement of healthy rangelands.

A comment asserted that stocking levels are too high, and forage production is only 1/5 of its potential, resulting in conflict with rangeland health standards. Another comment stated that light stocking levels would provide the highest long-term financial

return. A third comment stated that BLM should not allow utilization levels based on the take half/leave half principle.

These comments appear to suggest that stocking and utilization levels should be determined through a rulemaking process. What the rule is doing, on the other hand, is to make mainly procedural changes to improve administration of the grazing program as a result of experience implementing the 1995 rule. Stocking levels are better addressed during the land use and activity planning processes where the wide variety of relevant factors, such as climate, competing forage use, and other multiple use needs, can be addressed. The rule provides that monitoring data must be used to support a determination that livestock grazing is a significant cause for not achieving one or more rangeland health standards. Typically, utilization measurements or estimates are among the kinds of monitoring studies BLM conducts to inform analysis about the effects of stocking rates on land conditions at the local level.

A comment stated that BLM should not place western grazing rights above those in other areas of the country, and that the government provides competitive advantages to public land grazing permittees and lessees.

The comment raises fee and subsidy issues, which were not part of this rulemaking. The grazing fee formula was established in the Public Rangelands Improvement Act (PRIA) of 1978 (43 U.S.C. 1901, 1905) through 1985. The applicability of the formula was extended by Executive Order 12548 on February 19,

1986 (51 FR 5985). The regulatory provision implementing PRIA and the Executive Order appears at 43 CFR 4130.8-1. The formula is not affected by the costs of grazing in other parts of the country outside of the 11 western states of Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California. Fee and subsidy issues were examined in BLM's EIS for Rangeland Reform '94. This proposed action addresses refinements of Rangeland Reform '94, including, among other things, inefficiencies in the current regulations.

A comment stated that BLM "subverted" the NEPA process by not adopting language contained in a preliminary internal administrative review copy of the draft EIS (DEIS) obtained by the commenting organization and submitted as an attachment to its comment. The draft document contained descriptions of significant adverse effects on wildlife, biodiversity, and special status species. The comment stated further that not using this document prevented BLM from taking a "hard look" at environmental consequences of the proposed rule, and resulted in an unlawful post-hoc rationalization.

BLM did not "subvert" the NEPA process by editing the administrative review copy of the DEIS. As is BLM's usual practice, staff scientists and analysts prepared preliminary drafts of portions of the DEIS, then circulated their preliminary drafts among their colleagues. We circulate such documents for internal review in an effort to produce a factually accurate, scientifically sound, and well-reasoned DEIS. The administrative review copy represents a "snapshot" of an early stage of BLM's deliberative internal

review process. The text identified in the comment was revised as a result of further internal review for the reasons explained below.

Some of the revisions updated the draft document to reflect the actual contents of the proposed rule. For example, the administrative review copy stated that upland and riparian habitats would continue to decline because the proposed rule would worsen an "already burdensome appeals process" and decrease BLM's "ability to control illegal activities on public lands." In fact, the rule did not propose to amend the "appeals process," but remove provisions from the grazing regulations that were redundant to regulations of the Office of Hearings and Appeals in 43 CFR part 4. With respect to illegal activities on public lands, the rule proposed specific prohibited acts on grazing allotments that would constitute violations of the grazing regulations, with penalties including possible forfeiture of the grazing permit. However, the rule does not prevent BLM from enforcing other regulatory or statutory provisions on allotments or any other public lands.

The administrative review copy also concluded that the proposed rule would "greatly [diminish] the ability of the BLM to regulate grazing," to the detriment of wildlife, because it would defer to state water law. Deference to state water law is an element of the existing provision on water rights (43 CFR 4120.3–9), and was not new in the proposed rule. BLM retains regulatory authority over grazing use on public lands regardless of ownership of water rights on public lands. A state water right does not confer an attendant right to graze livestock on public lands. Moreover, BLM may hold

water rights for other beneficial uses, such as for wildlife, wildlife habitats, and recreation, even if it is precluded from holding water rights for watering livestock, which is currently the case in some states.

The administrative review copy was also further edited to cite legal requirements more precisely. In some cases, the conclusion based on the legal requirement was changed to reflect the agency's assessment of the effects of the rule. For example, the administrative review copy stated that "the increasing and burdensome administrative procedural requirements for assessment and for acquisition of monitoring data … abrogate our responsibility for management of water quality as codified in Section 313 of the Water Quality Act of 1987 (P.L. 100-4); and further, committed to by [sic] designation by most [sic] as a 'Designated Management Agency.' Delaying modification of grazing prescriptions when an[d] where warranted and/or mitigation of damages created by failure to implement a Best Management Practices (BMP's) iterative process will continue to stress western watersheds."

Section 313 of the Water Quality Act of 1987 amended various civil penalty provisions of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1251 et seq.) that are not administered by BLM and are not relevant to federally-permitted grazing. BLM is, however, subject to requirements pertaining to nonpoint source pollution that may result from livestock grazing, and the appropriate citation is Section 313 of the FWPCA, 33 U.S.C. 1323, rather than Section 313 of the Water Quality Act of 1987.

Section 313 of the FWPCA requires Federal agencies to "comply with … all state … and local requirements … in the same manner and to the same extent as any nongovernmental entity." 33 U.S.C. 1323(a)(1). BLM does not believe that delay in modifying grazing prescriptions or implementing BMPs would necessarily lead to violations of state and local water quality requirements, and that delay may be warranted in order to gather data that would lead to better-supported or more effective prescriptions and/or BMPs.

The BLM has also revised the assessment of the effects of changes made to subparts 4110 and 4180, which were initially characterized as "delaying tactics [and] could result in a protracted 7-year period for full implementation and change and this would result in a long-term adverse impact upon wildlife and biological diversity, including threatened and endangered and special status species…Present BLM funding and staffing levels do not provide adequate resources for even minimal monitoring and the additional monitoring requirement will further burden the grazing decision process."

BLM does not believe that long-term adverse impacts to wildlife and biological diversity would occur as a result of these changes, because both this rule and the existing regulations provide BLM discretion to begin changing active use, or to close a grazing allotment, when necessary for the protection of natural resources. BLM funding and staffing levels are issues that arise in annual budget development, and we plan to work to ensure that collecting data through rangeland monitoring remains a priority. While BLM agrees that the time frame for making decisions may increase due to the changes in

subpart 4180, BLM anticipates that taking additional time to formulate, propose, and analyze an appropriate action will improve decision making, thus improving rangeland health in the long term.

We expect these aspects of the rule to have slight environmental effects because reliance on monitoring data is not new to the grazing program. At present, changes in grazing use may be supported by "monitoring, field observations, ecological site inventory, or other data acceptable to the authorized officer." 43 CFR 4110.3. Decreases in grazing use must be supported by monitoring or field observation. 43 CFR 4110.3-2. Allotment management plans and resource activity plans "shall" provide for monitoring. 43 CFR 4120.2. Thus, monitoring is already an acceptable method of collecting data under the existing grazing regulations. To the extent that authorized officers already collect monitoring data to reach determinations under section 4180.2, the rule should have no environmental effect. To the extent that authorized officers currently rely on faster methods of data collection, the final rule could slow down the process of making determinations and thus potentially cause adverse environmental effects in the short term. However, these effects would be mitigated to the extent that existing monitoring data may be sufficient to support determinations, and to the extent that better data result in more effective and more appropriate action.

The administrative review copy raised concerns pertaining to the definition in the rule of "interested public," to provisions that no longer require the participation of the interested public in routine decisions such as permit renewals, and to provisions requiring

cooperation with Tribal, state, county, or local grazing boards. The administrative review copy stated that these proposals would "limit the ability of environmental groups to participate in the appeals process in the interest of wildlife….This should result in long-term adverse impacts to wildlife and special status species." With respect to grazing boards, the administrative review copy stated that the rule would "give greater emphasis to local entities that favor extraction of forage and water resources at the expense of wildlife and biological diversity [and] give local entities greater influence over decision making than national interests who are excluded from this venue."

The DEIS did not reflect these concerns because the rule does not prevent or limit the ability of an environmental group, or any other interested public entity, to "participate in the appeals process." Under 43 CFR 4160.1, BLM would continue to provide copies of proposed and final grazing decisions to all members of the interested public. They would then have an opportunity to seek administrative remedies. With respect to grazing boards, BLM believes that cooperating with Tribal, state, or local-government established grazing boards in reviewing range improvements and allotment management plans on public lands would provide valuable input regarding these matters. Moreover, under section 4120.5-1, BLM would continue to cooperate with institutions, organizations (such as environmental groups), corporations, associations, and individuals to achieve the objectives of the grazing regulations. BLM notes that, often, national groups have local chapters and representatives that serve as a conduit for their views at the local level. BLM accepts input from all sources, regardless of affiliation. BLM believes that while some reduced input may result from changes in the rule, that this would not result in

significant effects on wildlife because the interested public would be able to provide input into many grazing decisions and documents, such as range improvement plans, range development programs, Allotment Management Plans, Resource Management Plans (RMPs) and RMP amendments that govern these routine decisions.

The amendments of the administrative review copy were made before the DEIS was finalized, and they preceded the issuance of a final rule. The administrative review copy was amended to reflect the input from other reviewers regarding the likely effects of the rule and correct some factual errors.

D. Purpose and Need for Rulemaking

We received numerous comments regarding our reasons for this rule, including many form letters and form emails.

Several comments, although they supported the purpose of the proposed rule, stated that, with regard to the proposed provisions on grazing preference and removal of the term "permitted use," active use phase-in, and title to range improvements, the rulemaking record lacks concrete examples of problems with the current regulations that warrant the proposed changes. The comments stated that this may cause problems because BLM is effectively rescinding the 1995 grazing regulations as to these particular matters and restoring the pre-existing status quo. The comments went on to say that an agency rescinding a rule must "explain why the old regulation is no longer desirable," citing Action on Smoking and Health v. C.A.B., 699 F.2d 1209, 1216 (D.C.Cir.1983).

The comments concluded that, in the 1995 final rule, BLM rejected the concerns expressed in many of the comments on the 1994 proposed rule, and now needs to explain what has changed, including recognition that the concerns stated in those comments on the 1994 proposed rule have proven to be valid.

We believe the changes made in this final rule are consistent with the standard announced in Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983): "An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis." Id. at 57. We have supplied the requisite reasoned analysis for the changes in the Record of Decision and in the respective section-by-section discussions in this preamble.

Some comments stated that the current rules are consistent with the TGA because they have been tested in court, and that BLM should comply with Supreme Court rulings.

The changes being made in this final rule are based on years of experience implementing the 1995 regulations, and on comments received on the proposed rule and DEIS. In some instances, we found that provisions of those regulations were impairing our ability to protect and enhance rangeland health. For example, providing for sole United States ownership in range improvements led to a reduction in range improvement applications throughout the time that the regulations have been in effect. Also, requiring BLM to take action by the start of the next grazing year after determining that existing

grazing management practices or levels of grazing use were significant factors in failing to achieve standards of rangeland health has been seen to be an impracticable decision because it sets a deadline that is impossible to meet in most instances. Further, it is counterproductive because BLM has had to divert resources from rangeland management and monitoring to deal with legal challenges that arise when we fail to meet the unreasonable deadlines. In one of those legal challenges, a Federal appellate court interpreted existing section 4180.2(c) "to require the BLM not merely to begin the procedures set forth in 43 C.F.R. §§ (sic) 4110, 4120, 4130, and 4160, but rather to complete them and issue its final decision by the start of the next grazing year." Idaho Watersheds Project v. Hahn, 187 F.3rd 1035, 1037 (9th Cir. 1999). BLM had to divert resources from other locations to comply with the court's ruling. We will discuss these and other problems with the 1995 regulations in more detail when we address comments on the relevant provisions of the proposed rule.

The Supreme Court did not require BLM to retain its existing regulations. It found that the 1995 grazing regulations that it reviewed did not exceed the authority granted to the Secretary under the TGA. BLM does not dispute that the regulations being changed today were in compliance with the TGA and within the Secretary's statutory authority. Changes being made today also are in compliance with the TGA and are within the Secretary's statutory authority.

Some comments on the proposed rule suggested that BLM consider making changes through policy instead of through regulation changes.

BLM very often does make changes through policy rather than rulemaking. However, if regulations in place need to be modified to achieve improved management, we can only change those regulations through rulemaking.

A comment stated that BLM should not enact excessive regulations because they make it uneconomic for traditional ranching families to pursue their business.

Excessive regulation can increase costs to user groups. We believe the changes made in the final rule will make grazing on public land more efficient without negatively affecting the health of the public rangelands.

Many of the comments on the proposed rule stated that the regulation changes seem to be driven by only one small faction: grazing permittees and lessees. They went on to say that that the regulations should balance the requirements of consultation, cooperation, and coordination (CCC), and no emphasis should be placed on a single user group. The comments stated that this will not result in increases in cooperation with interested publics as stated because the proposed regulations diminish the levels of CCC with other interested publics and emphasize CCC with a single commercial user of public resources. Other comments stated that improving efficiency would be detrimental to public participation.

The rule provides a mechanism for persons and organizations to attain and maintain "interested public" status for purposes of participating in management decisions as to specific allotments. At the same time, the rule provides a way to remove from the list of interested publics those individuals, groups, or organizations that have been on the list indefinitely without ever commenting on or otherwise providing input in the decision process. These regulations will provide numerous opportunities for the interested public input into resource management allocation decisions.

BLM believes that in-depth involvement of the public in day-to-day management decisions is neither warranted nor administratively efficient and can in fact delay BLM remedial response actions necessitated by resource conditions. Day-to-day management decisions implement land use planning decisions in which the public has already had full opportunity to participate. Also, such in-depth public involvement can delay routine management responses, such as minor adjustments in livestock numbers or use periods to respond to dynamic on-the-ground conditions. For example, a decision to delay turn-out, increasing number of livestock and shortening the season of use in response to delayed vegetative growth resulting from a cool, moist spring may not be possible if a large number of interested parties need to be consulted first. While this type of adjustment makes good management sense from a resource perspective, the time taken to meet the current administrative requirements may preclude being able to take this action. Cooperation with permittees and lessees, on the other hand, usually results in more expeditious steps to address resource conditions and can help avoid lengthy administrative appeals.

Some comments supporting the purposes of the proposed rule, agreed that there is a need for improving working relationships with users. One comment pointed out that cooperation with ranchers would minimize incompatible uses of interspersed private lands, such as subdivisions, and another said that it would provide better care for the land.

BLM recognizes that ranchers who are committed to the health of the land are valuable partners. These regulatory changes are designed, among other things, to ensure sufficient oversight of public land grazers, and to facilitate better cooperation between BLM and the ranching community, while protecting the land.

Comments opposing the rule stated that the emphasis on certain considerations, such as the social, economic, and cultural effects of agency actions that change levels of grazing preference, would have adverse impacts on natural resources, leading to degradation of the public lands. Comments stated that improving working relationships with grazing permittees and lessees would tend to weaken the ability of BLM to manage rangelands in a timely fashion by adding considerable time before action can be taken. One comment stated that BLM should have working relationships with the public, not just ranchers. Another accused BLM of appeasing ranchers and increasing the level of environmental damage.

BLM retains the discretion to determine how much time is warranted in coordinating with grazing permittees and lessees. Considering the social, economic, and

cultural effects of actions that change grazing use levels contemporaneously with considering the environmental effects should not appreciably increase this time or the time consumed in implementing decisions. We have not materially changed current policy in this regard in this rule, and therefore anticipate few if any additional delays in the authorization or implementation of grazing management actions on public lands.

BLM does have a working relationship with many publics and encourages public participation in the management of public lands. However, with respect to day-to-day management actions involving livestock, close coordination by BLM with those responsible for the "hands on" management of the livestock, in other words, the permittees and lessees, is essential to ensure that livestock use impacts on resources do not prevent achieving other multiple use management objectives.

Many comments stated that the proposed rule will slow down or diminish any progress made by the 1995 rule.

The Rangeland Reform effort of 1994-95 made numerous significant changes directed at restoring rangeland health. The changes in this rule preserve the regulatory framework of Rangeland Reform and make its implementation more practicable. In this rule, some time frames for developing appropriate management decisions and, in some cases, implementing changes in the amount of forage authorized for grazing use have been lengthened. We expect that having more time to develop practical alternatives and make decisions will lead to better decisions, supported by reliable data gathered through

monitoring, and result in achieving long-term management goals and rangeland health. These new regulatory changes do not change the resource protection values of Rangeland Reform, but they do provide additional time for developing appropriate actions to effect grazing changes.

A comment stated that the final rule should reflect the legal requirements for cooperation with the public, other agencies, and users, in various laws, including FLPMA, the Fish and Wildlife Coordination Act, the Migratory Bird Treaty Act, the Public Rangelands Improvement Act (PRIA), the Sikes Act, and the TGA.

We are complying with all relevant laws. However, attempting to list various requirements of multiple Federal laws in the grazing regulations would be unwieldy and would require amendment of the regulations to reflect future changes in these laws or the addition of new laws. Rather, BLM utilizes manuals, handbooks, and other guidance to ensure compliance with relevant laws.

One comment stated that the proposed rule failed to consider the definition of "principal or major uses" in Section 103 of FLPMA, which "includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, and timber production."

The rule addresses domestic livestock grazing, which is one of the principal uses of the public lands under FLPMA. Regulations on other principal uses of public lands managed by BLM are found elsewhere in Title 43 of the CFR.

One comment stated that politicians should be barred from direct intervention in matters related to public lands grazing.

Presumably, the comment is referring to congressional contacts or oversight associated with livestock grazing. BLM manages the public land, and takes into consideration the views of all interested parties when it is appropriate to do so. This may include the views of public officials, including Members of Congress.

Many comments expressed the concern that the proposed rule would lead to impairment of the health of the rangelands. They phrased this concern in a variety of ways. Comments stated that the proposed rule would do little to promote riparian recovery or prevent decline of plants or animals. Others stated that the rule would cause additional resource damage to specific geographical areas, such as the Northern Rockies. Comments stated that granting greater discretion to permittees and lessees and to BLM managers may result in more resource impairment. One comment stated that the proposed changes would reduce cooperation in achieving rangeland health objectives. One comment urged that the rule should provide for rangeland management to avoid resource depletion and to conserve resources for the future. Comments disagreed with our view that the changes in the rule were largely administrative in nature with little

direct effect on the environment. Comments urged that the rule should be amended to avoid the short-term adverse effects on the environment predicted in the Environmental Impact Statement. Comments stated that the objectives of the regulations should be revised to recognize the real purpose of the proposed rule: to keep ranching operations viable, with rangeland health as a secondary objective. Some comments urged that BLM consider that healthy lands improve local economies.

BLM has not changed the regulatory text in response to these comments. Many provisions in the proposed rule, including increasing the requirements for monitoring, removing the 3-year limit on temporary nonuse, sharing title to range improvements, and others, are designed to protect and enhance the long-term health of the land. The anticipated environmental impacts of the changes are set forth in detail in Section 4.3 of the EIS and in the Addendum. We believe that the changes will improve working relationships with permittees and lessees, protect and improve the health of the public rangelands, and improve administrative efficiency.

Many comments stated that the monitoring requirements in the proposed rule would cause increased workloads for BLM field managers and personnel.

We acknowledge that the monitoring requirements in the rule will likely increase the workload of BLM field range managers and specialists somewhat, but we anticipate that the increases in monitoring will be accompanied by the benefits of improved management and saved time in the end, as we explain later in this preamble in our

discussions of changes in sections 4110.3-3 and 4180.2. Further, the change in section 4180.2(c) in the final rule, imposing the monitoring requirement only if a standards assessment indicates that the allotment is failing to achieve standards or that grazing management practices do not conform to the guidelines, rather than requiring existing or new monitoring data to support every standards attainment determination, will minimize the workload increase. Any workload increase that arises will require BLM to reprioritize work or to find alternative means of collecting the monitoring data we need, or some combination of these, to the extent that additional monitoring is required. This may include cooperation with the grazing permittees and lessees themselves and with local citizen volunteers. BLM believes the changes in the regulations associated with monitoring will help achieve sustainable management objectives.

One comment stated that BLM has indicated the necessity of making permit administration more efficient, but that these regulatory changes are motivated by a determination to exclude the interested public from the decision process. It went on to say that if BLM claims to have processed over 10,000 permits and issued over 13,000 permits, the agency should break down these numbers to show what percent of permits were renewed each year, how many were renewed under Appropriations Act "riders", and how many were appealed. The comment said that this would help establish a quantitative assessment of the need for change.

BLM does not believe a quantitative assessment of permit renewals is necessary to explain the need for efficiency changes to the overall administration of the grazing

program. Efficient use of public resources, including Federal funding and management, are always proper goals of agency management. However, BLM has revised Section 3.4.1 in the EIS in an effort to address the concerns expressed in the comment. Section 3.4.1 in the EIS now provides additional information which further quantifies and explains the permit renewal process.

The comment also states that our motive in making these regulatory changes was to exclude the interested public from the decision process. In fact, the final rule requires consultation with the interested public where such input is of the greatest value, such as when deciding vegetation management objectives in an allotment management plan, or preparing reports evaluating range conditions. BLM retains the discretion to determine and implement the most appropriate on-the-ground management actions to achieve the objectives and/or respond to range conditions. BLM values productive consultation with the interested public. However, we must retain flexibility in order to take responsive, timely, and efficient management action. We believe that a more efficient consultation process will help facilitate efficient management of the rangelands while still providing for significant input from interested parties.

Many comments stated that BLM should increase funding to improve working relations with permittees and lessees and promote conservation of public lands, and that even small funding increases could greatly contribute to the mutual goals of continued grazing and healthy rangelands, if they are applied in an innovative and collaborative manner to facilitate improved on-the-ground livestock management practices.

BLM manages its Congressional appropriations in light of its varied and diverse statutory missions and responsibilities, and seeks opportunities to leverage its funding by engaging in partnerships wherever possible. Funding of BLM programs is not within the scope of this rulemaking. However, BLM intends that this rule will broaden opportunities for partnerships.

One comment stated that BLM should establish policy and subsequent regulations with procedures for optimizing habitat quantity and quality for the variety of multiple uses and those species that are considered biologically dependent on their respective ecosystems.

BLM manages for multiple uses under the guidance found in BLM land use plans. BLM land use planning regulations, and policy and procedure are found in 43 CFR subparts 1601 and 1610, BLM Manual 1601 – *Land Use Planning*, and BLM Handbook H-1601-1 – *Land Use Planning Handbook*. BLM policy and procedures regarding management of wildlife and their habitats, sensitive species and the introduction, transplant and augmentation of fish, wildlife, and plants are found in BLM Manuals *6500 – Wildlife and Fisheries Management, 6525 – Sikes Act Wildlife Programs, 6840 – Special Status Species Management and 1745 – Introduction, Transplant, Augmentation, and Reestablishment of Fish, Wildlife and Plants.* Promulgating regulations concerning these subjects is outside the scope of this rule. Species-specific provisions are not

appropriate for national regulations, and should be contained in local land use plans issued in accordance with these manual provisions and the planning regulations.

E. Environmental Effects of the Rule

Large numbers of comments addressed environmental effects of the proposed rule, mostly in opposition to the rule. Many of these comments also addressed the DEIS; these comments are discussed under VI. Procedural Matters later in the preamble.

One comment, however, stated that BLM has overstated the adverse impacts of the proposed rule, and that we should say that the short term impacts of regulatory changes would be so minuscule as to be not worth mentioning. It went on to agree that, in the long term, changes under the proposed rule can be expected to improve range conditions.

Many comments expressed concern that the combination of changes in the regulations would lead to multiple-year deferment of appropriate actions. The concern was that requiring monitoring data to make a determination, allowing up to 24 months for appropriate agreement or to develop and analyze an appropriate action, and generally allowing up to 5 years to implement changes of more than 10 percent in level of use, could lead to as much as 9 years of delay in changes being made on allotments that most needed the adjustment in grazing management. Impacts on wildlife and habitat, threatened and endangered species, invasive weed infestations, recreational uses, and BLM workload and funding were all issues of concern.

First of all, we anticipate the possibility of short term adverse effects occurring in those limited instances where vegetation recovery is delayed by the extended implementation deadline. Based on evaluations of land health from 1998 through 2003, this may be an issue on fewer than 16 percent of all allotments. In addition, BLM has the authority under section 4110.3-2 and section 4110.3-3 of the rule to decrease use or suspend use without a phase-in period if resource conditions demand. Only in those instances where longer term reductions are requested and rangeland health is not imperiled would the recovery of vegetation be somewhat delayed.

Furthermore, the time frames provided for each of the actions listed are limits. BLM, from its experience to date, expects that in most cases, the maximum amount of time allowed for each of the 3 steps (monitoring, appropriate action development, and implementing forage allocation changes of more than 10 percent) will likely not be needed. At the end of Fiscal Year 2002, only about 16 percent of the 7,437 high priority allotments assessed for land health status were not achieving standards because of existing livestock grazing management. Assessments of the remaining 84 percent indicated that standards were met, or that there was a reason other than existing livestock grazing for not meeting standards. Most of the adjustments on these allotments that failed to meet standards due to existing livestock management have been made in the season of use, or movement and control of livestock, rather than in levels of active use. An unknown portion of these adjustments were changes of more than 10 percent in active use. We do know from conversations with State Office range program leaders, and from

information gathered during range program evaluations and field office visits that reductions in active use in excess of 10 percent are rare. In fact, in 2003 the forage actually consumed, as documented by billings, was 6.7 million AUMs, while the amount authorized by term permits was 12.6 million AUMs. This reduced amount of actual grazing was largely due to drought, plus other reasons, such as fire. However, it reflects the fact that grazers are already taking temporary nonuse or being suspended, either voluntarily or by agreement, due to the current range and weather conditions.

As stated in section 4.3.7 of the EIS, there may be limited short term negative impacts if the full 24 months or more is needed, once we have sufficient data through assessment or monitoring or both, to develop an appropriate action and complete the required coordination and consultation. Based on determinations made since 1998, only about 16 percent of allotments need adjustment in livestock management or levels of use to make progress toward achieving land health standards. The negative impacts of taking the full 24 months to develop an appropriate action can be expected to be limited to about 16 percent of allotments. However, the extra time taken to develop a meaningful action is expected to provide greater long term benefits to other resources. For example, merely reducing the level of use in a riparian area is not likely to improve the riparian area condition, because adjustments in season, frequency, and duration of use are much more effective management strategies for restoring riparian functionality. Taking the additional time to develop an appropriate action may actually decrease the amount of time taken to implement the decision, particularly if the decision is not appealed as a result of the additional time spent in consulting with permittees and formulating and

analyzing options. Implementing decisions can be delayed by 18 to 36 months if appealed and if a stay is granted.

Under the preferred alternative, using existing or new monitoring data will not be necessary on every allotment in order to make a determination, but only on those allotments that fail to meet standards due to levels of grazing use or management practices. The number of allotments where all 3 action issues (monitoring, 24 months to develop remedial action, and 5-year phase in of adjustments) are needed is expected to be small. Monitoring is necessary only for those allotments as to which a BLM status assessment indicates that rangeland is failing to achieve standards or that existing grazing management practices do not conform with guidelines. Then BLM will use existing or new monitoring data to determine whether management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines. The extended phase-in period will apply only when conditions require forage allocation changes of 10 percent or greater. Furthermore, the final rule provides for exceptions to the phase-in period in section 4110.3-3(a). Finally, the final rule provides the authorized officer authority to close an allotment or portions thereof immediately if continued grazing use poses an imminent likelihood of significant resource damage. As a result, BLM retains the discretion to address resource problems on a timely basis.

One comment that opposed the rule stated that BLM should not adopt grazing regulations that will hurt the land in the short term while betting that long term studies will lead to better land conditions at some indefinite time in the future.

BLM believes that adoption of the proposed rule will lead to improved land conditions in the long-term as indicated in the analysis in section 4.5 of the Addendum to the EIS. That analysis explains that some adverse impacts are unavoidable, but in the long-term more comprehensive and sustainable decisions would be developed by relying on data and information collected through monitoring.

One comment stated that BLM should acknowledge that western rangelands are in decline due to improper grazing strategies, and lack of appropriate measures or changes to deal with drought, fire, exotic weeds, and excessive horse populations.

In the Rangeland Reform rule we recognized a need to prioritize our improvement of rangeland health. As of the end of 2002, we had completed evaluations on 7,437 higher priority allotments. We determined approximately 16 percent of those allotments not to be meeting land health standards because of current livestock grazing management. We conclude from this that generally most public rangelands are not in decline, or at least not to levels that we deem to have failed to achieve the standards and conform with the guidelines. To the extent that more than 16 percent of allotments may have so failed, we have found that grazing is not a significant cause. We have begun actions to address the problems we identified. Whenever a grazing decision is appealed, changes in grazing management may be delayed. Responding to appeals, preparing for hearings, and responding to requests for data associated with the appeals also requires dedication of personnel and funds that would otherwise be used to implement effective changes to

achieve improvement in condition of resources on the very allotments that need to have changes made. The changes made in this rule will improve our ability to implement effective corrective measures -- taking time to gather more data, if necessary, and engage knowledgeable and affected parties will improve the likelihood of an effective solution, and participation by the affected operator in determining the solution will increase his likelihood of complying with the corrective measures, and make BLM decisions less susceptible to appeal. This rule also improves BLM's ability to focus fiscal resources on those areas not meeting standards because of current livestock management, and to develop appropriate actions that will result in more collaboration and cooperation with permittees and lessees in addressing problems. We believe that we have adequate measures in place in the grazing regulations to deal with emergency situations such as drought and fires, or where continued grazing use poses an imminent likelihood of significant resource damage (section 4110.3.3(b)). The long term goal of this final rule, as was the case in 1995, is to reverse declines in western rangeland health, in those areas where there are declines, through improved consultation and cooperation with ranchers, and interested state and local authorities, as well as the interested public, in devising means to restore degraded areas and maintain currently healthy areas.

The number of appeals has increased from 48 in 1998 to 139 in 2002, diverting resources from making on the ground improvements in rangeland health. By developing cooperative instead of adversarial roles, the fiscal resources being spent on appeals could be made available for making appropriate management changes and on the ground improvements.

Comments stated that BLM should not adopt the new regulations because they will weaken wildlife protections. One comment stated that BLM's analysis shows that the regulatory changes would not mitigate declines in populations of mule deer, sage-grouse (Centrocercus urophasianus), and many other species, except when ranchers agree not to graze for 3 years. Another comment asked BLM to show by allotment the current status and population trends of greater sage-grouse and analyze the cumulative effects of the regulatory changes. One comment asked BLM to discuss the agency's capacity, in terms of budget and personnel, to assess and monitor the status of sage-grouse, and how its capacity would be affected by the regulatory changes. Another comment along the same lines asked that we consider the potential impacts of implementing the proposed rule on our ability to implement the National Sage-Grouse Habitat Conservation Strategy. Other comments urged BLM to add specific sage-grouse conservation measures to the regulations. A comment stated that BLM should consider the effects of the rule on non-game bird species that are likely candidates for listing as threatened or endangered species. Another said that BLM should consider values of wildlife displaced by livestock on public lands in order to address the loss of wildlife associated recreation which has occurred under current management. One comment disagreed with the DEIS's statement that the proposed rule would have little or no effect on wildlife, stating that the proposed rule would fundamentally change the way BLM manages rangelands and have "profound" impacts on wildlife. One stated that the changes in the proposed rule may in some circumstances constrain biologists and range conservationists from recommending and implementing management changes in response to conditions that compromise the

long-term health and sustainability of rangeland resources. The comment stated that these aspects of the rule would have the potential to be detrimental to fish and wildlife resources.

The final rule does not alter BLM's mission of managing the public lands under the multiple use and sustained yield standard as provided in FLPMA. Grazing is just one of the many multiple uses for the public lands. The final rule will not prevent specialists from recommending and implementing management changes in response to conditions that may compromise the long-term health and sustainability of rangeland resources. BLM has flexibility to effect changes in grazing management to address rangeland health, including:

● the use of permit/lease terms and conditions to achieve resource objectives (section 4130.3);

● modification of terms and conditions when active use or related management practices are not meeting plan objectives or standards and guidelines (section 4130.3-3);

● suspension of active use in whole or in part due to the reasons set forth in section 4130.3-3 based on monitoring, field observations, ecological site inventory or other acceptable methods (section 4110.3-2); and

● issuance of immediate full force and effect decisions to close areas to grazing when the authorized officer concludes that soil, vegetation, or other resources require immediate protection because continued grazing use poses an imminent likelihood of significant resource damage.

The comments appear to assume that the proposed changes make significant revisions in the existing regulations. This is not the case. The changes are largely administrative in nature, and are designed to ensure a more balanced approach to rangeland management, to improve working relationships with permittees and lessees, to protect rangeland health, and to improve efficiency and effectiveness, including bringing the regulations into compliance with court decisions. The proposed rule would not fundamentally change the way BLM manages land and would not have a "profound" effect on wildlife. The proposed revisions do not alter BLM's responsibilities under existing statutes, including the Migratory Bird Treaty Act, the Endangered Species Act, the Sikes Act, and applicable Executive Orders. In addition, the standards and guidelines under section 4180.2 remain intact. As we have stated, BLM acknowledges that some of the changes in implementation may have short-term impacts on wildlife on a small portion of BLM allotments. Any short-term impacts should be outweighed by long-term rangeland health benefits. In short, we have not changed our view that most of the changes in the final rule will have little or no detrimental effect on wildlife.

Land use plans and site-specific analyses are the proper vehicles for considering the site-specific effects of grazing on wildlife. General impacts on wildlife are addressed in the EIS. Allowing adjustments in active use in excess of 10 percent to be implemented over a 5-year period could have short term adverse effects on plants and wildlife. Specific impacts would be determined on a case by case basis in site-specific NEPA analyses and would identify possible mitigation measures. Changes in active grazing use in excess of 10 percent are infrequent. Also, the provision for phased in changes in use

would not apply if it conflicted with an applicable law, e.g., if immediate implementation was a condition of a biological opinion under the ESA. The 5-year phase-in provision for reductions in stocking rates that exceed 10 percent of current stocking may affect Special Status Species not listed as threatened or endangered under the ESA. Any adverse effects on such species, however, should be limited to very few grazing allotments. BLM range assessments through fiscal year 2002 indicate that existing livestock grazing was a significant factor in not meeting land health standards on about 16 percent of the allotments that had been assessed and evaluated. Of that 16 percent, a lesser number of allotments required stocking rate reductions exceeding 10 percent. Many grazing system changes involved management of livestock rather than stocking rates, such as by limiting livestock access to certain portions of the allotments. Furthermore, under section 4110.3-3(b), if BLM determines that resources require immediate protection or continued grazing use poses an imminent likelihood of significant resource damage, we can immediately close allotments or portions of allotments or modify grazing use to protect the resources in question.

Providing BLM up to 24 months to propose and analyze appropriate action to address failure to meet rangeland health standards may adversely affect wildlife in the short term, possibly including Special Status Species not listed as threatened or endangered, but will benefit wildlife in the long term. Based on the evaluations completed by the end of FY2002, this provision would affect less than 16 percent of allotments. The provision that allows BLM to extend the timeframe beyond the 24 months would only be invoked if failure to comply with legal requirements was outside

of BLM's control, i.e., the responsibility of another agency. The most likely occurrence of that nature would be if there was a delay due to the requirements of the ESA not being fully met. Concerns and issues regarding specific species such as sage-grouse and any specific threatened, endangered, or other special status species are fully addressed in land use or activity planning or permit or lease issuance or renewal environmental analyses. Specific detailed analysis for individual species is beyond the scope of this rule. In developing these regulations, BLM ensured that it had the mechanisms in place to take appropriate action to protect, as necessary, wildlife resources. The EIS and Addendum discuss the sage-grouse conservation strategy at the end of Chapter 1, and address the impacts of this rule on the sage-grouse strategy in the cumulative impacts analysis in Chapter 4. Effects on wildlife in general are discussed are analyzed in Sections 4.3.7 through 4.3.9 of the EIS and Addendum.

Finally, these changes are based on our experience implementing the regulations adopted in 1995. The changes here do not significantly alter those provisions adopted in 1995 that were examined in the accompanying EIS for that rule. As discussed in that EIS, the changes adopted at that time were expected to improve rangeland health, including habitat for sage-grouse. The timing and phase-in provisions adopted here are not expected to have significant effects on the improvements in rangeland health derived from the 1995 regulatory changes. BLM's National Sage-Grouse Habitat Conservation Strategy (2004) reflects the combined Federal and state response to the sage-grouse situation, and outlines how BLM intends to achieve its goal of managing public lands to maintain, enhance, and restore sage-grouse habitats while providing for sustainable uses

and development of public lands. The commitments made in the strategy are unaffected by the final grazing rule.

One comment stated that procedures followed by BLM in the management of public rangelands contribute to petitions for Federal listings under the ESA, and ultimately to more restricted and costly management of Federal lands. The result of this management is rangeland with reduced capacity to support native big game and upland game species, which has an adverse effect on western cultural, social, and economic values.

This rule focuses primarily on improving the efficiency of administrating livestock grazing on public lands. During each step of the land use planning process, BLM considers and analyzes the potential effects on wildlife. This consideration begins at the broad land use planning phase, and continues through allotment management planning, activity planning, and during development of terms and conditions of a grazing permit or lease. We recognize that recreation and tourism, including the viewing or hunting of animals, have increased in their relative contribution to many local and regional economies. The rule adopted today does not alter the way BLM considers potential effects on wildlife. Therefore, this rule is not expected to have an observable direct impact on the ability of the public to enjoy wildlife, and will not adversely affect the economic values associated with wildlife. Specific impacts on local or visiting wildlife enthusiasts would be more appropriately addressed in any subsequent land use

plan or allotment management plan analysis. Finally, as stated above, these changes are based on our experience implementing the regulations adopted in 1995. The changes here do not significantly alter those provisions adopted in 1995 that were examined in the accompanying EIS for that rule. The provisions adopted here are not expected to have significant effects on the improvements in rangeland health derived from the 1995 regulatory changes.

Several comments raised a number of other environmental factors that BLM should discuss, and stated that grazing has adverse effects on them: air quality, wild horses and burros, the prevalence of invasive weed species. Comments stated that the proposed rule would encourage the spread of invasive species, threatening shrub-steppe habitat, and damaging riparian and wet areas.

These issues are discussed in detail in the EIS in sections 4.3.6, 4.3.9, and 4.3.2, respectively. To the extent that the fundamentals of rangeland health and the standards and guidelines for grazing administration address these issues in subpart 4180, the final rule makes no substantive changes in the fundamentals or standards themselves. Addressing more specific impacts on wild horses and burros is outside the scope of the rule. Specific impacts on wild horses and burros are more appropriately addressed in subsequent land use plans, landscape-level analyses, or undertaking-specific analyses.

Comments also asked BLM to impose various levels of restriction on grazing in the rule, including eliminating public land grazing altogether on the grounds that

domestic livestock are exotic to the western range. Some urged us not to increase grazing in arid lands. Another comment suggested that BLM should require permittees and lessees to fence all riparian areas to eliminate livestock as a cause of degraded riparian areas. Others advocated eliminating grazing in riparian areas.

The final rule does not directly result in a change in levels of active use on arid lands or anywhere else. The rule continues to allow BLM to manage the public rangelands to address adverse impacts. For example, the rule retains BLM's authority to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use when we determine and document that continued grazing use poses an imminent likelihood of significant resource damage. Thus, if a riparian area is threatened with significant damage, we can have it fenced to exclude livestock. The rule also retains the fundamentals and standards and guidelines provisions of the rule to address rangeland health.

Although fencing of riparian areas to improve grazing management is appropriate under certain circumstances, a requirement to fence all riparian areas would be impractical due to potential conflicts the fences might pose with other multiple uses such as recreation and wildlife habitat, and because of the expense of construction and ongoing maintenance. Therefore, we have not included such a requirement in the final rule.

F. Alternatives Considered

Three general objectives for the changes to the regulations were identified in the Draft EIS (Section 1.2.2): (1) improving working relationships with permittees and lessees; (2) protecting the health of the rangelands; and (3) increasing administrative efficiency and effectiveness of the process of managing livestock grazing on the public lands, including a means for resolving legal issues. The preceding section of this Preamble under Purpose and Need shows which objective primarily impels each change in the regulations.

The regulatory changes in this final rule are relatively narrow in scope, both individually and cumulatively. Most changes respond to a specific concern that arose through experience implementing the 1995 regulations. The changes clarify or improve specific elements of the 1995 regulations. The changes were combined in a single rulemaking, including public participation and the NEPA process, because it was the most efficient way to amend those portions of the regulations. The changes in the regulations and alternatives to them do not fit into themes commonly used for the range of alternatives in an EIS concerning public land management, e.g., various levels of resource protection or resource use. Therefore, those categories were not used to frame the alternatives in the EIS.

The sections of the 1995 regulations for each of the changes to the regulations are discussed in Section 2.1 of the Draft and Final EIS (No Action). The changes are discussed in Section 2.2 (Proposed Action). Table 2.5 compares the three alternatives

evaluated in detail. Some regulatory changes are primarily editorial. Some changes are more controversial than others.

Additional alternatives, in the form of different combinations of changes, were not developed for the EIS because each of the regulation changes is relatively independent of the others. Thus, there are many combinations of the 18 elements that could be changed or not changed and combined into an alternative. Such alternatives would not provide a clear basis of choice because the differences between them would be small. The broad comments regarding alternatives fall into several subject areas, which are addressed below.

Some comments recommended major changes to the grazing program. Some comments asked BLM not to permit grazing on arid lands. Others advocated eliminating grazing in riparian areas. Other comments recommended use of long-term rest to help achieve standards. One comment recommended reducing stocking rates by 25 percent on allotments not meeting standards of rangeland health. Some comments recommended that the alternatives considered address the relationship between livestock grazing and other uses of the public lands. Some comments recommended that BLM develop alternatives to address a number of specific aspects of grazing management, such as: (1) determining the capacity of the land to support wildlife, watershed function, and livestock; (2) determining livestock stocking rates; and (3) requiring allotments to demonstrate statistically significant improvement.

In light of the broad sweep of the changes in the regulations in 1995 and the accompanying analysis in the EIS at that time, and based on the years of experience in implementing those regulatory changes, we have determined that meeting our purposes and needs – the health of the public rangelands, improved working relationships with permittees and lessees, and improved administrative efficiency – does not require major changes in the grazing program.

The matters identified in these comments generally are best considered in land use planning or otherwise on a site-specific basis, not in a rule related to overall regulatory provisions. The relationship between livestock grazing and other uses of the public lands, and the capacity of the land to support wildlife, watershed function, and livestock, are questions of multiple use management, i.e., how public lands and their various resources "are utilized in the combination that will best meet the present and future needs of the American people." 43 U.S.C. 1702(c) (definition of "multiple use"). Pursuant to Section 202 of FLPMA (43 U.S.C. 1712), BLM prepares resource management plans (RMPs) to consider and balance the multiple uses that may be appropriate for tracts of public lands. Decisions determining or adjusting livestock stocking rates, or determining how to measure an allotment's improvement in rangeland health, ordinarily require site-specific information that can most efficiently be obtained by developing an allotment management plan (AMP) or a grazing decision.

Some comments suggested that the EIS should have included an alternative more directed at conservation interests and the recommendations of environmental advocates,

such as one that includes sage-grouse conservation measures. They believed that the regulation changes are biased toward the interests of the livestock industry and that the livestock industry would benefit at the expense of other users and the environment. One comment urged BLM to add specific sage-grouse consideration measures to the alternatives considered.

BLM does not believe that these changes will benefit the livestock industry at the expense of other users and the environment. The rules continue to promote consultation and coordination with other users, with other agencies and governments, and with tribes (4120.5). The long-term objective of requiring livestock grazing operations to meet standards for rangeland health has not been changed from the 1995 regulations. As discussed in the Draft and Final EIS for Rangeland Reform '94, the overall changes adopted in that rulemaking were anticipated to have a number of positive environmental impacts, including positive impacts for sage-grouse. The rule now under consideration is designed to make refinements in the existing regulations and is not a significant departure from the regulations as revised in 1995. We believe that standards for rangeland health can be achieved without the major changes that may have been included under a substantially different "conservation alternative" suggested by some of the comments. Such an alternative was considered in the EIS for Rangeland Reform '94 and the anticipated effects on many livestock operators who are dependent on public rangelands for their livelihood were displayed in that document. The changes to the regulations adopted here were never intended to be either a comprehensive restructuring of the grazing program or a replacement of the 1995 grazing regulations. We do not believe

that a broad "conservation alternative" which makes major changes to the livestock grazing program falls within a reasonable range of alternatives that meet the purpose and need of the action under consideration in the current EIS. Measures to protect sage-grouse and their habitat are appropriately considered in the Bureau's sage-grouse conservation strategy, and at the land use plan and/or permit issuance levels. We addressed the sage-grouse conservation strategy generally in Chapter 1 and Chapter 4 of the EIS.

Some comments suggested that the alternatives analyzed in detail in the EIS do not provide a clear basis for choice. Some comments focused on a concern that the alternatives in the EIS do not represent a reasonable range of alternatives because they are too similar. Some comments stated that BLM should prepare an EIS that thoroughly analyzes the cumulative impacts of a range of alternative actions that will truly enable the agency to manage grazing lands under its jurisdiction responsibly. Some comments suggested an alternative that would provide for the development of baseline data on the grazing capacity of public lands. Some comments said that BLM cannot so narrowly define the scope of a project that it forecloses a reasonable consideration of alternatives. (Colorado Environmental Coalition v. Dombeck, (185 F.3d 1162, 1174 (10th Cir. 1999)). Many comments recommended that BLM should examine alternatives that would make major changes in the grazing program or in the relationship between livestock grazing and other uses of the public lands.

The broad-ranging analysis suggested by these comments was addressed in Rangeland Reform in 1994 and the accompanying EIS for the 1995 regulatory changes. As explained in the EIS for this rulemaking under "The Purpose of and Need for the Proposed Action," some of these revisions to the grazing regulations were developed as a means of achieving BLM's rangeland management objectives, including meeting the standards for rangeland health. It is not BLM's intent to revise major aspects of multiple use management or the livestock grazing program in this rule. BLM's intent is to bring efficiencies to the existing livestock grazing program, thus improving rangeland health on all allotments. The regulatory changes are narrow in scope, and include no changes in grazing fees, the fundamentals of rangeland health, or the standards and guidelines for grazing administration. They leave the majority of the 1995 regulatory changes in place. The changes are driven by specific issues and concerns that BLM has recognized, either based on our own experience or from input by stakeholders. Additional, markedly different, alternatives would not meet the purpose of and need for the action. While there may be conflicts among resource uses on specific sites that may point to a need to change the way in which livestock grazing occurs on an allotment, such conflicts are more appropriately resolved on an allotment-specific basis, rather than in the grazing regulations. We believe the three alternatives analyzed in detail in the EIS provide a reasonable range of alternatives that best provides a meaningful comparison for achieving the purpose and need described in the EIS.

Some comments expressed concern over the relative lack of quantification of impacts in the EIS. They contended that this limits BLM's ability to compare alternatives.

At the rulemaking tier of decision, such as in the case of developing this rule, meaningful quantification is generally not appropriate. Quantification is more appropriate at site-specific levels of decision, where on-the-ground issues are analyzed and resolved. To provide perspective on how the regulation changes may affect all allotments, the EIS provides relevant information (see Sections 4.3 and 5.4.5) on the number of allotments where assessments have been completed, and the percentage of those that meet standards for rangeland health. Of those that do not meet the standards, we also provide the percentage of allotments where standards are not met because of livestock grazing on the allotment, and where active use may need to be changed by more than 10 percent. BLM will make grazing decisions to change management practices or levels of grazing on all allotments that do not meet standards, if we find that failure to achieve the standards is due in significant part to existing grazing management practices or levels of grazing use. The time frames amended under this final rule may also affect those allotments. The numbers of allotments where assessments have been completed, and the percentage of those that meet standards and guidelines for rangeland health, provide a perspective on the proportion of allotments where this final rule, e.g., in section 4110.3, may apply. Because this final rule does not make any of the site-specific decisions on where livestock grazing occurs and how, BLM's ability to present and analyze quantifiable estimates in the EIS is limited.

Some comments recommended the No Action alternative, or at least the No Action alternative with regard to one or more of the changes. The No Action alternative considers that each of the changes would not occur. Some comments stated they preferred the No Action alternative because they believed that the proposed changes were designed to undermine the amendments made in the regulations in 1995. Some comments believed the regulatory changes could open the door to potentially adverse environmental consequences.

The changes in the regulations were designed to accomplish one or more of the three objectives stated at the beginning of this section of the preamble and in Section 1.2.2 of the EIS, Purpose and Need by Topic. As in 1995, one of the overall objectives of this final rule is to amend the regulations to assist BLM in managing the grazing program in a way that makes progress toward achieving the standards for rangeland health on all allotments. As experience has shown, some provisions in the 1995 rule have impaired BLM's flexibility to meet this goal. These have included the 1995 provisions regarding the relatively short timeframe (before the start of the next grazing year) within which BLM must develop and implement an appropriate remedial action after BLM determines that current livestock grazing practices significantly contribute to the non-achievement of one or more standards or do not conform with guidelines, the requirement that the United States must hold 100 percent of the title to permanent structural range improvements constructed under a Cooperative Range Improvement Agreement, the requirement the United States must hold, to the extent authorized by state law, the right to use water on

public land for the purpose of livestock watering on public land and the requirement that authorized nonuse of a grazing permit is limited to no longer than 3 consecutive years. The latter arose from the Federal Court invalidation of the provision for conservation use permits, which created a need for more flexibility in authorizing temporary nonuse to promote rangeland recovery.

The most useful comparison for the changes in the regulations is to compare the changes (Proposed Action) to the 1995 regulations (No Action). Most of the regulation changes do not lend themselves to being implemented in stages or degrees of implementation in a way that would materially affect environmental impacts or rangeland health. Those that do are addressed in the section-by-section analysis of comments.

Many comments expressed concern that alternatives should have been considered for several of the changes in specific sections of the regulations. These specific provisions include the 24-month period after a determination on an allotment that livestock grazing is a significant factor failing to achieve the standards for rangeland health under section 4180.2(c), and the 5-year period for phasing in reductions in active use of more than 10 percent, under section 4110.3-3(a).

We examined what we believe to be an appropriate range of alternatives in the draft EIS, and have not added additional ones in the final EIS. When considering time limitations, an infinite array of options is theoretically possible. The alternatives

considered here were reasonable, given the nature of the rule, and sufficiently distinct to allow for meaningful comparisons in the analysis.

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Currently, section 4180.2(c) requires that BLM take appropriate action as soon as practicable but no later than the start of the next grazing year, after we determine that grazing is a significant factor in the failure to achieve a rangeland health standard or conform with a guideline. Similarly, section 4180.1 requires appropriate action no later than the start of the next grazing year, after BLM determines that grazing management needs to be modified to ensure that the conditions described by the fundamentals of rangeland health exist. While BLM prefers to take appropriate action as quickly as possible, recent experience has demonstrated that complex circumstances can sometimes require extended periods to form effective long-term solutions. The lack of standards attainment in rangelands, and the concomitant inability to achieve and provide the physical and biological conditions described by the fundamentals of rangeland health, often is a result of gradual deterioration over many years due to the interaction of many factors, including inappropriate livestock grazing. The process to develop action plans to determine and implement appropriate corrective appropriate action can be complex. Factors complicating the formulation of action plans include the legal requirements of NEPA, the National Historic Preservation Act (NHPA), and ESA; water rights adjudications; and the presence of multiple permittees on an allotment. We determined the proposed action timeframe of 24 months to be the shortest reasonable timeframe that would accommodate the vast majority of corrective actions. The final rule added language to recognize that, in some instances, even more time may be required due to

delays outside the control of BLM. We initially considered other deadlines, such as 12 or 18 months, but we viewed them as inadequate to deal with the more complicated situations. We considered removing all timeframe guidance, but determined that a reasonable deadline would be useful to help ensure that BLM actions were not inadvertently delayed. We have removed the action timeframe requirement in section 4180.1 for the reasons stated in section V of this rulemaking and in the Addendum to the EIS.

BLM examined two alternatives for active use changes greater than 10 percent in the EIS, in addition to the current regulations. Scoping indicated that permittees and lessees supported a 5-year option to address the financial shocks that can come in the rare instances when large decreases are made in active use. Scoping did not indicate strong support for longer or shorter timeframes. BLM addressed the impacts associated with mandatory or discretionary phase-in systems. This was a reasonable range of alternatives for this issue.

Comments that address specific sections of the regulations and BLM's responses are addressed under the section-by-section analysis and response to comments.

G. Cross-cutting Issue-related Comments: Interested Public; Planning; Monitoring; and Enforcement

Many comments addressed issues that pertain to the grazing program as a whole or to multiple sections of the regulations. We will respond to these comments in this section of the preamble on the role of the interested public, planning, monitoring, and enforcement.

1. Role of the Interested Public.

Numerous comments addressed the role of the interested public in grazing management. The proposed rule contained a definition change for the term and also modified the special involvement opportunities for those with interested public status. BLM has considered the comments but has decided not to make major changes in the rule. The final rule represents what BLM believes to be the proper balance between public participation and the need for flexibility in day-to-day grazing management operations.

Under the previous regulations, one could obtain interested public status by (1) making a written request to be treated as the interested public, or (2) by submitting comments regarding grazing management on a specific allotment during formal public comment periods. Under the final rule, submitting a written request is sufficient to obtain interested public status initially, but this alone is no longer sufficient to maintain that status. Instead, subsequent comment or other participation in the decisionmaking process is necessary. This requirement is designed to avoid an inefficient use of Federal resources on clerical duties associated with persons and entities that have no longer expressed an active interest in the issue. Submitting comments during formal public

comment periods, however, is still enough to qualify as a member of the interested public. In short, those who request the status must follow up with later actions, while those who initially demonstrate their interest via comments automatically qualify as the interested public for that decision process. Any member of the general public may initially achieve interested public status through these means, and former members of the interested public may also regain that status through these same means at any time.

Many were concerned that this definition change would unduly limit participation by the public. On the other hand, some comments on the proposed rule expressed the opinion that the term was still too broadly defined, and more requirements should be implemented before one qualifies as a member of the interested public. It is important to remember that the consultation opportunities available to the "interested public" under the grazing regulations are not the full extent of public involvement in BLM grazing and rangeland management matters. In addition to pursuing the opportunities afforded under the grazing regulations, any member of the public may attend meetings of Resource Advisory Councils, and may provide input and comments regarding general grazing policy, meet with BLM managers and/or staff upon request, and participate in the land use planning and NEPA analysis and decision-making processes that concern rangelands. By modifying the definition, though, BLM hopes to avoid the sometimes inefficient use of Federal resources that has been associated with the interested public system, while still maintaining a valuable outlet for public participation. The comments relating to the definition of interested public are addressed in more detail in the Section-by-Section Analysis portion of the preamble at section 4100.0-5.

The proposed rule also included changes in the role of the interested public. Special consultation requirements were reduced in situations involving day-to-day management activities but retained for broader level planning decisions that guide daily activities. For example, BLM is required to consult, cooperate, and coordinate with the interested public when planning range improvement projects, developing allotment management plans, and apportioning additional forage. The interested public is also provided, to the extent practical, an opportunity to review and provide input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use or to change terms and conditions of a permit or lease. Such reports include monitoring reports, evaluations of standards and guidelines, BAs or BEs, and any other formal evaluation reports that are used in the decisionmaking process. Additionally, there are multiple opportunities for public involvement when land use plans are amended or revised. Under the final rule, though, BLM will no longer formally consult with the interested public when undertaking routine management tasks such as renewing individual grazing permits, actually modifying a term in a grazing permit (as opposed to reviewing reports on monitoring and supporting data), or issuing temporary nonrenewable grazing permits.

Many comments opposed these reductions in consultation with the interested public. Some recreationists and other non-grazing public land users were particularly opposed to having opportunities for the interested public limited in any way. These comments emphasized the view that multiple use public lands are best managed when

multiple interests are involved with both planning level and implementation level decisions. Some stated that while the system may lead to some inefficiency, when viewed from a grazing economics perspective, democratic principles favored more public involvement on public lands.

Numerous comments supported the changes and expressed the view that the interested public consultation system has led to decisionmaking gridlock. Many of these comments noted the important role public input plays at the planning level but argued that the involvement in routine decisions is counterproductive for all involved. Some expressed the view that only those with an economic interest should participate in allotment-level decisions.

We have retained the proposed changes in the final rule. BLM is confident that consultation with the interested public on the larger scale planning decisions will continue to provide ample opportunity for public input. These broader scale decisions then guide the day-to-day management. The changes will, in turn, allow these daily decisions to be made in a more timely and efficient manner. The changes are addressed in more detail later in this section of the preamble at sections 4110.2-4 (allotment boundary adjustments), 4110.3-3 (reductions of permitted use), 4130.2 (issuance and renewal of grazing permits and leases), 4130.3-3 (modifications to permits or leases), and 4130.6-2 (nonrenewable permits and leases).

2. Land Use and Allotment Management Planning

BLM received numerous comments addressing the types of uses that are generally allowed on public lands. They suggested eliminating some uses or dedicating lands to a single use. The comments included eliminating livestock grazing on areas with wild horses and burros, establishing rules to optimize wildlife habitat, phasing out livestock grazing completely, selling public lands, not allowing any commodity uses, and dedication of land for water conservation.

BLM manages public lands in accordance with numerous laws passed by Congress, including FLPMA, which requires these lands to be managed for multiple use and sustained yield. FLPMA defines "multiple use" as "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of land for some or all of these resources or related services over acreages large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some of the land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." 43 U.S.C. 1702(c).

BLM cooperatively develops local land use plans in order to determine balanced, appropriate, and sustainable land uses, following processes defined by various laws, regulations, and policies. These grazing regulations govern management of grazing on lands that have been determined through land use planning to be appropriate for livestock grazing. BLM's land use planning processes are governed by regulations in 43 CFR part 1600, and are not addressed in this rule. The sale of BLM lands, while permitted by FLPMA, is outside the scope of this rule.

Comments stated that BLM should determine the forage capacity of its land using scientific livestock utilization rates and re-set permitted use or preference to reflect that condition. The comments went on to say that the fact that AUMs are in suspension demonstrates that the range cannot support those levels of grazing.

This issue is outside the scope of this rule. BLM makes the determinations referred to in the comment during the planning process. AUMs are in suspension due to current conditions that may not be permanent, such as, for example, drought conditions. Forage availability may also change in the future as a result of range improvements or improved health of the rangelands.

We received several comments that addressed our land use planning processes, suggesting that better control of motorized vehicle use and access would improve rangeland conditions. Others suggested that BLM should lease lands for recreation,

wildlife, and water conservation rather than assign grazing as a sole use. Still others urged BLM not to recommend or provide interim protection for more Wilderness Study Areas or Wild and Scenic Rivers, stating that their management overtaxes BLM's capability.

BLM develops local land use plans to address land use activities such as off-road vehicle and other recreational uses, wildlife, and water conservation uses. Local land use planning allocations are beyond the scope of this rule. BLM will not recommend or designate any additional Wilderness Study Areas under the Utah Wilderness Settlement and its application, by policy, to BLM lands outside of Utah. IM No. 2003-274 and IM No. 2003-275. The regulations governing management of Wilderness Areas and Wild and Scenic Rivers are in 43 CFR part 6300 and 43 CFR 8351.2, respectively. Those regulations are beyond the scope of this rule.

A comment stated that Federal rangeland health standards demand that BLM's rule focus decisionmaking on management objectives stated in land use plans, activity plans, and grazing decisions.

The rule provides that its objectives will be realized in a manner consistent with land use plans. The regulations also provide that active use is based on the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer. The regulations allow BLM to make changes in the grazing preference as needed to conform to land use plans or activity plans, to apportion

additional forage to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan. BLM may modify terms and conditions of permit and leases when the active use or related management practices do not meet management objectives specified in the land use plan, allotment management plan or other activity plan, or an applicable decision.

A comment stated that BLM has not effectively addressed resolution of multiple use conflicts that lead to demands for livestock-free lands.

FLPMA requires BLM to manage lands for multiple uses. We resolve conflicts among competing uses on individual tracts of public land through land use planning, with participation by the interested public and by or on behalf of the proponents of the competing uses.

One comment stated that either BLM should establish regulations that provide for making land use planning-level determinations regarding whether public lands are "chiefly valuable for grazing" as described in the October 2002 Solicitor's Memorandum, or the Secretary should withdraw that memorandum and provide for grazing permit "retirement" within its land use planning process or through its permit issuance or renewal processes.

The comment alludes to an “M-Opinion” issued on October 4, 2002. M-Opinions (i.e., “major” opinions) usually are responses to requests by agencies of the Department

of the Interior regarding the interpretation of statutes administered by the Department. M-Opinions are signed by the Solicitor or his designee, may receive the concurrence of the Secretary, and are binding on all agencies of the Department. BLM believes we have sufficient guidance to consider the issue of "grazing retirement," and so does not need a regulatory provision to address this topic.

Grazing retirement and the TGA's "chiefly valuable" standard have been discussed in two recent Solicitor's memoranda, as well as the 2002 M-Opinion. In one memorandum, Solicitor Leshy concluded that Congress, at 43 U.S.C. 1752(c) and 1903(c), specifically provided for the possibility of retiring public lands from livestock grazing, but that BLM must make such a decision in a land use plan or an amendment to a land use plan. Memorandum to the Director of BLM from the Solicitor (January 19, 2001).

While the later M-Opinion supersedes the 2001 Solicitor's memorandum, it agrees that land use planning is an appropriate process for considering retirement of grazing, and that whenever the Secretary retires public lands from grazing, she must determine that such lands are no longer "chiefly valuable for grazing and raising forage crops," within the meaning of Section 1 of the TGA, 43 U.S.C. 315. In addition, the M-Opinion concludes that a decision to cease livestock grazing is not permanent. Memorandum to the Secretary from the Solicitor, M-37008 (October 4, 2002). The M-Opinion was later clarified in a memorandum stating that whenever the Secretary considers retiring grazing permits in a grazing district she must determine whether such

lands remain chiefly valuable for grazing if any such retirement may ultimately result in the modification of the district's boundaries. Memorandum to the Assistant Secretary for Policy, Management and Budget, Assistant Secretary for Land and Minerals Management, and the Director of BLM from the Solicitor (May 13, 2003).

One comment stated that BLM should provide for permit or lease retirement with compensation to the permittee.

The suggestion that permittees and lessees be compensated for grazing retirement is not adopted. BLM lacks statutory authority to provide for such compensation.

One comment stated that, if BLM considers itself obligated to preserve public land ranching in the West in the face of competing economic pressures for use of ranches and ranchland, then we should reconsider previous policy proposals that were dropped, such as conservation easements and acquisition of ranches, because these may be creative ways to sustain viable operations without inducing further damage to the land.

Under FLPMA, BLM is obligated to manage the public lands on the basis of multiple use and sustained yield unless otherwise specified by law. FLPMA includes livestock grazing as one of the principal or major uses of the public lands, along with fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. BLM never proposed acquisition of ranches as a policy proposal. BLM dropped consideration of exchanging public lands for

conservation easements on private lands after comments received in the spring of 2003 indicated general public opposition to this policy proposal.

One comment urged BLM to update our allotment management plans.

BLM usually determines which allotments require allotment management plans (AMPs) in land use plans. The timing, development, and updating of AMPs is determined through BLM's budgeting and planning processes, not in the grazing regulations. Therefore, this issue is outside the scope of this rulemaking.

3. Monitoring

Many comments addressed monitoring on public lands, and suggested ways that BLM could use monitoring to improve public land management. Comments stated that BLM should not authorize grazing on areas where it lacks adequate data to determine that standards are met or to ensure that resource damage is avoided. They recommended that BLM set up exclosures as control sites representing various major ecological types of land in order to establish benchmarks for assessing grazing management. Discussions of other comments on monitoring directed at specific regulations appear elsewhere in this preamble under the appropriate section.

BLM authorizes livestock grazing on areas that have been determined through the land use planning process to be available for grazing. BLM determines whether lands are available for livestock grazing through the land use planning process in compliance with

FLPMA and 43 CFR part 1600. The process involves public participation, assessment, decisionmaking, implementation, plan monitoring and evaluation, as well as adjustments through plan maintenance, amendment, and revision. This planning process adheres to the principles of multiple use and sustained yield and uses an interdisciplinary approach to integrate physical, biological, economic and other sciences. BLM is required to take appropriate action if we determine that existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform to the guidelines for grazing administration. This final rule emphasizes the importance of using monitoring data by adding a requirement for its use when determining whether existing grazing management is a significant factor in failing to achieve the standards and conform with the guidelines under section 4180.2(c). In the final rule, we have clarified the proposed rule by providing for the use of monitoring data if a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines. BLM endorses the use of exclosures to determine the compared effects of grazing and its absence on various ecological types of land, and discusses their use in several BLM and interagency rangeland monitoring technical references.

Comments suggested that monitoring was so critical to determining whether multiple use objectives are being met on grazing allotments that it should be specifically required in all allotments, along with other methodologies, in the regulations.

BLM agrees that monitoring is important in measuring progress toward meeting

objectives in grazing allotments and elsewhere on public land. Allotment-level monitoring is generally a component of allotment management plans, and is sometimes addressed in land use plans. Current allotment management planning includes monitoring on the maximum possible number of priority areas, limited only by budget and workforce. We currently administer grazing on about 21,535 allotments (2005). BLM has established monitoring sites in nearly 11,500 allotments, and currently collects monitoring data to some degree on about 3,500 of those allotments each year. These monitoring sites are used primarily to evaluate achievement of land use plan objectives, to ascertain changes in condition, and to determine trend (toward or away from a desired condition). Information is collected at some of the monitoring sites more often than at others, depending on priority and purpose. Specific methods of data collection are better addressed in handbooks and technical references, which are much more readily updated. However, it is not always necessary to monitor to find that rangeland is achieving standards and that management practices conform to the guidelines. Under the final rule, if a standards assessment indicates that the rangeland is failing to achieve the standards or that grazing management practices do not conform to the guidelines, we will use monitoring data to support our determination regarding the significant contributing factors for failing to achieve the standards or to conform to the guidelines.

One comment stated that BLM should clearly show its long-term budget strategy that outlines the monitoring programs, funding, and personnel that will be added to the agency's capacity to carry out the implied monitoring. The comment asserted that BLM does not have sufficient funding, personnel, and management support for adequate

monitoring of vegetation, Special Status Species, and Birds of Conservation Concern, let alone other resources.

Funding is provided by annual congressional appropriation. We will prioritize allocation of our discretionary monitoring funding to address resource needs and provide a foundation for management adjustments. BLM agrees that generally, monitoring is a critical component providing data for evaluation and adjustments of terms and conditions of grazing authorizations, unless the need for the change in authorization terms and conditions is immediate and obvious, such as when conditions described at 43 CFR 4110.3-1(b) are encountered (e.g., wildfire burns available forage, necessitating temporary suspension of grazing use). We will continue to prioritize funding to meet the monitoring needs required by this rule. The change in the final rule that limits the monitoring requirement to those cases where a standards assessment indicates that the rangeland is failing to meet standards or that management practices do not conform to the guidelines does not result in a negative budgetary impact.

4. Enforcement

Some comments suggested that BLM should enforce all of its current regulations or strengthen them to prevent environmental damage caused by livestock grazing or coal bed methane development. Another comment stated that BLM should allow permittees and lessees to "manage" recreation on public lands.

BLM agrees that it should enforce all of its public land regulations and does so with the resources and authority provided to it by Congress. We believe that the final grazing regulations provide adequate authority for BLM to take action when necessary to arrest and reverse environmental damage attributable to livestock grazing on public lands. Regulations governing coal bed methane development are found in 43 CFR part 3100 and are not addressed in this rule. BLM cannot grant management authority for one user group, as such, to "manage" another user group. However, any qualified individual or business entity may obtain a permit under BLM regulations to carry on specific activities on public lands. For example, a rancher can obtain a special recreation permit under 43 CFR part 2930 and operate as an outfitter or guide. However, the rancher cannot obtain authority to bar casual recreational use of the allotment he uses, as the comment seems to suggest would be desirable.

H. Other Recommendations

Several comment letters offered additional recommendations for BLM actions that were not specific to any particular regulatory section.

1. Advisory councils and grazing advisory boards

BLM received comments regarding advisory council membership and function. A comment stated that we should re-establish Multiple Use Advisory Councils (MUAC) to resolve local issues, contending that the RACs that superceded MUACs and Grazing Advisory Boards in 1995 in many cases cover too large an area to respond adequately to local issues. Such MUACs reorganized on a District or Field Office basis, according to

the comment, could be a positive force for problem solving, conflict resolution, and vetting land management issues far beyond grazing management matters. Another comment suggested that RAC membership be made up of 50 percent conservationists, 10 percent community interests, and 30 percent independent biologists and not be dominated by ranchers who represent their narrow special interest. One comment stated that BLM should drop reference to RACs as public oversight bodies because they are ineffective at arriving at a decision.

The suggestion to re-establish MUACs is outside the scope of this rule. To the extent there is concern that RACs cover too large an area to address local issues adequately, the regulations pertaining to RACs at 43 CFR subpart 1784 provide for the formation of RAC subgroups to gather local level input on specific issues. If you believe a particular issue should be addressed on a smaller subgroup scale by the RAC with which you are associated, you, as a member of the public, may suggest such an action to the RAC. The comment implies that RACs only consider grazing management matters. However, the regulations at 43 CFR subpart 1784 provide that RACs can address all facets of public land management. Regarding RAC composition, regulations at section 1784.6-1(c) and (d) require that the Secretary provide for balanced and broad representation from commercial, environmental, scientific, and aesthetic interests, as well as the public, Tribes, and state and local governments. This balanced composition of the RAC comports with the statutory requirements of Section 309 of FLPMA. We have not adopted these suggestions in the final rule.

Some comments expressed disappointment that BLM chose not to propose reestablishment of Grazing Advisory Boards as suggested during the public scoping process on the ANPR and the notice of intent to prepare an environmental impact statement. They further expressed disappointment in the justification for not pursing regulations that would allow board establishment that was presented in the DEIS section 2.4.

The RACs that were established following the 1995 grazing regulation amendments have generally assumed the role played by the Grazing Advisory Boards, whose authority "sunset" on December 31, 1985. RACs provide an evenly balanced advisory board to cooperate with BLM, and are available to represent local interests on all facets of public land management. The regulations governing board functions at 43 CFR subpart 1784 also provide for the formation of RAC subgroups to gather local level input on specific issues. The suggestion to redefine the role of RACs is outside the scope of this rulemaking. Moreover, we disagree that they are ineffective as public oversight bodies. The RACs represent a balance of views among various interests concerned with the management and use of the public lands. Furthermore, the Councils are advisory in nature and have given the public an effective forum for participating in the management of the public lands, as well as giving land managers direct public insight into proposed programs and policies. BLM has included in this final rule a provision that BLM cooperate with Tribal, state, county, or locally established grazing boards when reviewing range improvement projects and allotment management plans on public lands. We feel that these existing and proposed provisions adequately address the need for a forum for

cooperation and coordination on both local and regional issues affecting livestock grazing on public lands.

2. Wild horses and burros

One comment objected to the "unfair treatment BLM has given to wild horses, using them as scapegoats for the abuses of livestock and plotting to eliminate them along with the vested interest livestock community."

BLM manages rangelands for multiple use and sustained yield, and follows all laws and regulations governing the management of public lands, including the Wild and Free Roaming Horse and Burro Act of 1971. Management considerations for and analysis of impacts on wild horse and burro populations are described in EIS chapters 3.12, 4.2.9, 4.3.9, and 4.4.9. BLM consults with the Wild Horse Advisory Board to coordinate an efficient management program in accordance with statutory direction and at a level commensurate with funding appropriated by Congress.

3. Reserve Common Allotments

We received several comments on the concept referred to as "Reserve Common Allotments" (RCA), which was discussed in the ANPR. We decided not to pursue the possibility of creating RCAs in the proposed rule following a generally unenthusiastic reception during the public scoping process. Comments that opposed this concept speculated that it would foster abuse and excessive grazing on the one hand, or could lead to a loss of preference AUMs on public lands on the other. Some comments supported

designation of RCAs on a temporary basis only, not permanent designation that would eliminate those AUMs from term permit availability. Comments that supported the RCA concept expressed disappointment that we did not propose them because they recognized the RCA as a potential solution to environmental and economic challenges confronting modern-day ranching. Another comment suggested that RCAs could provide an outlet for producers whose allotments are unusable due to weather, fire, or scheduled range improvements such as prescribed burning or stream restoration. This comment also suggested implementing the concept on a pilot basis and monitoring performance on a set of administrative and ecological criteria.

BLM recognizes that these thoughtful comments demonstrate cautious interest and qualified support of the RCA concept. It is also obvious that the proposal rolled out in the ANPR was insufficiently defined and inadequately developed to gain full public support. We will continue to examine the concept of establishing temporary or permanent forage reserves, or alternative management scenarios, through future policymaking processes. Due to the keen interest in this subject, we will communicate with the public during any policy development process on RCAs.

4. Incentives for good stewardship.

Some comments stated that rangeland conditions would improve if BLM regulations established various incentives for ranchers who implement good management practices, or allowed "considerations" for permittees who voluntarily reduce livestock numbers or build wildlife projects, or provided for purchasing willow whips from private

landowners for planting on public lands. One comment suggested adopting conservation easement tax laws currently in effect in Colorado, New Mexico, and other states.

In past decades, BLM, in consultation with user groups and the public, has examined various programs (e.g. Incentive Based Grazing Fees - 1993; Cooperative Management Agreements – 1984) intended to provide incentive for rancher stewardship of public lands for multiple uses, including wildlife habitat. Ultimately, consensus could not be achieved and these efforts were set aside. More recently, in early 2003, BLM's Sustaining Working Landscapes (SWL) policy development initiative explored possible incentives for ranchers to engage in partnerships to achieve conservation ends, while encouraging and enabling good stewardship. In mid-2003, BLM decided to focus its grazing program resources on this rulemaking effort, rather than attempt simultaneously to accomplish SWL policy development and a rule. Upon completion of this rule, BLM intends to revisit SWL policy concepts and focus on updating grazing manuals and technical procedures needed to implement the grazing rules.

While BLM supports the use of conservation easements for protection of watershed and habitat values on private lands, we do not have authority to change the tax laws of individual states.

5. Encouraging flexible management.

One comment expressed concern that proposed changes in the regulations would limit adaptive management options, and urged BLM to increase opportunities for adaptive management for unforeseen circumstances such as drought.

The proposed rule is designed to improve working relations with permittees and lessees. Better working relationships should result in more frequent communication and greater willingness to consider additional management alternatives.

6. Determining appropriate technical procedures.

One comment stated that BLM should incorporate the scientific and economic principles expressed in Catlin et al. (2003) and Stevens et al. (2002) into its analysis and permit renewal processes, so that appropriate changes are made to ensure that native diversity and productivity are restored to grazed BLM lands. (The comment refers to Catlin, James, Jaro Walker, Allison Jones, John Carter, and Joe Feller, 2003: Multiple use grazing management in the Grand Staircase National Monument. A tool provided to the Monument range staff by the Southern Utah Land Restoration Project and Stevens, Laurence E., Peter Stacey, Don Duff, Chad Gourley, and James C. Catlin, 2002: Riparian ecosystem evaluation: a review and test of BLM's proper functioning condition assessment guidelines.)

Employment of the technical procedures and principles described by these documents is appropriately addressed in policy, manuals, and guidance rather than in a rule. When revising policy, manuals, and other guidance, BLM reviews all available

technical materials, and will review the Catlin and Stevens articles before the next revision.

One comment stated that BLM policy should require that grazing decisions always be based on appropriate scientific data because it is required by the Data Quality Act.

Some comments maintained that BLM is required to prove, on administrative appeal, that the terms and conditions of grazing permits are consistent with the Data Quality Act (DQA), Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554).

As discussed above, BLM is not required to launch an affirmative defense of grazing permits in response to an administrative appeal to OHA. BLM may come forward with a rebuttal, but the appellant bears the ultimate burden of persuasion.

OHA may not be the forum of choice for raising questions with respect to BLM's compliance with the DQA's standards (i.e., "the quality, objectivity, utility, and integrity of information"). As required by the DQA, BLM has issued guidelines that provide an administrative mechanism for raising such questions directly with BLM (Bureau of Land Management Information Quality Guidelines, published October 1, 2002).

Another comment stated that utilization studies sanctioned by BLM should include methodology for determining which species consumed the forage to ensure that measures taken to correct over-utilization are effective.

Methodologies for utilization studies are better addressed in reference manuals, guidance, and policy.

One comment stated that BLM should require data used to support changes in grazing preference to be acceptable to the permittee or lessee, as well as to the BLM authorized officer.

Congress entrusted the Secretary of the Interior with the responsibility to manage the public lands. The Secretary, in turn, has delegated this responsibility to BLM. We understand that permittees and lessees are more likely to accept decisions and act cooperatively if the data we use to support changes in grazing preference are acceptable both to BLM and the affected permittees or lessees. However, if the data BLM uses to support changes in grazing preference are not acceptable to a permittee or lessee, BLM is still obligated to make its management decision in light of its statutory management responsibilities.

7. Access to public lands.

One comment stated that BLM should require other users of the public lands to get permission to be on public land from BLM, and that BLM should inform the permittee when other users and/or BLM staff will be out on the permittee's allotment.

Determining whether and under what circumstances public land users other than livestock permittees need approval to use public lands is outside the scope of this rule. Casual recreationists normally do not need permits to visit public lands, so there is no way BLM can inform grazers in advance of such visitation. Whenever feasible, in the spirit of consultation, cooperation, and coordination, BLM will inform the livestock operators in advance about BLM field operations or public uses under permit, lease, or license that affect grazing management of allotments where they have permits or leases. However, a provision requiring advance notification would be impractical to implement and detract from efficient management of the public lands. BLM declines to adopt this suggestion.

One comment asserted that a rancher does not have to have a grazing permit to access his vested rights, and that the rancher's ownership of water rights, forage rights, and improvements are issues that are not appealable, and cited several court decisions.

Under the TGA (sections 3 and 15), ranchers must hold a BLM permit or lease in order to graze livestock on public lands. The current regulations, as well as the proposed regulations, reiterate this requirement, at 40 CFR subparts 4130 and 4140, which has

been upheld by decisions of Federal courts. See, e.g.,Osborne v. United States, 145 F.2d 892, 896 (9th Cir. 1944) (livestock grazing on public lands is "under the original tacit consent or … under regulation through the permit system … a privilege which is withdrawable at any time for any use by the sovereign.") Although the Court of Federal Claims ruled in 2002 that a holder of ditch right-of-way established under the Act of 1866 also has an appurtenant right for livestock to forage 50 feet on each side of the ditch, this matter is still in litigation and no final decision has been rendered by the court. Hage v. United States, 51 Fed. Cl. 570, 580-84 (2002).

8. Judicial matters.

A comment stated that BLM should add a provision to the grazing regulations requiring BLM to notify permittees when BLM has received a Notice of Intent to sue or has been sued under ESA, Clean Water ACT (CWA) or other environmental law, when the outcome of the lawsuit may affect the permittee's allotments or grazing privileges. This advance notification would allow the permittee to take whatever action he deems necessary to protect his interests.

Notification procedures for potential challenges under various federal laws are more appropriately handled through policy rather than regulation. This is because as statutory or regulatory provisions change BLM may have to undertake a regulatory change, which is time consuming. BLM does not have rulemaking authority to implement CWA or ESA as to citizen-suit provisions or notice of intent provisions. The CWA provides that notice "shall be given in such manner as the Administrator [of the

Environmental Protection Agency] shall prescribe by regulation." 33 U.S.C. 1365(b). The FWS and NOAA Fisheries may promulgate regulations for the enforcement of the ESA, by citizen suit and by other means. 16 U.S.C. 1540(f). BLM will defer to the rulemaking authorities of these agencies. As a matter of policy and customer service, however, BLM routinely informs grazing operators of such eventualities as lawsuits that may affect their allotments.

9. Interagency cooperation.

One comment stated that BLM should collaborate with other agencies like FWS, and another stated that state wildlife agencies should be fully engaged, because BLM decisions can easily affect these other agencies and their work, because BLM decisions can affect species of concern, and because effective wildlife management requires coordination with uses related to grazing management.

BLM routinely consults with FWS and NOAA Fisheries in accordance with the requirements of the ESA and BLM Manual 6840 on Special Status Species Management. This consultation ensures that actions requiring authorization or approval by BLM are consistent with the conservation needs of species of concern and do not exacerbate the need to list additional species. As for state agencies, current regulations require cooperation with them. This rule does not change this. Section 4120.5-2 states, "The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals." Many specific provisions also call for cooperation and consideration

with the staff having lands or managing resources in the area affected by proposed BLM grazing management decisions.

For more commentary regarding interagency cooperation, see the discussion of section 4120.5-2, Cooperation with Tribal, state, county, and Federal agencies, in Part V of this preamble.